

NOTICE: Private Sector PAIA Manual Submission Extension

The Department of Justice and Constitutional Development has extended the exemption which was to have lapsed on the 31st of December 2011. Private companies within certain sectors are now exempted from compiling and submitting information manuals in terms of section 51 of the Promotion of Access to Information Act to the South African Human Rights Commission until the **31st of December 2015**.

While these private companies no longer have to submit manuals during the period of the new exemption they are not exempted from complying with the rest of the Act. Please also note that if an entity is a private body but not a private company as defined in the Companies Act of 2008 e.g. a non-governmental organization, it will not have to comply with section 51 of the legislation until the end of the moratorium exempting such companies.

In terms of the Government notice no.34914 certain private bodies will still have to submit their manuals in terms of the legislation to the Commission. These private bodies are those which operate in specific sectors, with 50 or more employees OR operate in specific sectors and have an annual turnover equal to or exceeding specific amounts.

Two of the relevant particular sectors and turnover amounts are listed below:

SECTOR	EMPLOYEES	ANNUAL TURNOVER in Rmillions ZAR
Retail, Motor Trade	50 or more	15
Financial and Business Services	50 or more	10

Please note in general that the PAIA legislation creates the framework to the right to access information enshrined in section 32 of the Constitution of the Republic of South Africa, Act 108 of 1996. The purpose of this legislation is to promote a culture of transparency, accountability and good governance both in the private and public sectors. Therefore, the Act places specific compliance requirements on both state institutions and private sector.

PAIA gives a requester the right to lodge a request from the information officer (head) of a private body. A private body as defined in the Act includes juristic bodies. The Act further defines the head of a private body as “the chief executive officer or equivalent officer of the juristic person or any person duly authorized by that office....”

The legislation defines private bodies (juristic persons) as:

- a) A natural person who carries or has carried on any trade, business or profession, but only in such capacity
- b) A partnership which carries or has carried on any trade, business or profession or
- c) Any former or existing juristic person, but excludes a public body

Juristic persons will therefore include close corporations, non-profit organizations and trusts.

Please also note that holding companies and each of their entities or subsidiaries must submit separate manuals for each entity respectively.

In terms of section 51 of PAIA, the head of a private body must:

- compile a section 51 manual which is a roadmap of the company
- submit the manual to the South African Human Rights Commission
- effect material changes if any each time these occur and resubmit to the SAHRC
- electronic submissions to the Commission are accepted, sent to dmalesa@sahrc.org.za thereafter followed by hard copy originals;
- manuals must be submitted to SAHRC head office at the address listed below
- update any material changes on the manual on a regular basis;
- make the manual available as prescribed by the Act at the company offices and on their website;
- must annex a request form to the manual and also make request form available on the website and at the company premises access points;
- there are penalties for non-compliance – please see section 90 of PAIA, the Commission has not imposed fines for non-compliance to date but reserves the right to do.

The manual must among others contain the following information:

- details of the company's postal, email and street address, fax and phone of the company,
- the description of available records generated by the company stating those which are automatically available and those that are available on request.
- outline the request procedure in terms of PAIA;
- state who the head of the company is (CEO is usually the Information Officer in terms of PAIA)
- stipulate the fees applicable as legislated by the Act which are chargeable to requesters
- remedies available to requesters if their request for information has been refused
- details facilitating request for access to a record etc.

Please note the exemption from compliance lasts until the 31st December 2015.

You can forward soft copies of your manual to dmalesa@sahrc.org.za and all signed hard copies by the head of your organisation to the Commission to the following:

The Commission's postal address is:

Private Bag X2700
Houghton
2041
Fax: 011 403 0625

Contact persons:

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